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Grayned v. City of Rockford--A Limitation on the Application of the Overbreadth Doctrine to Antidisturbance Regulations in the Schools

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GRAYNED V. CITY OF ROCKFORD—A LIMITATION ON THE APPLICATION OF THE OVERBREADTH DOCTRINE TO ANTIDISTURBANCE REGULATIONS IN THE SCHOOLS

In the 1972 case *Grayned v. City of Rockford*,[1] the United States Supreme Court refused to invoke the "overbreadth doctrine" under the First Amendment to invalidate a statute prohibiting disturbances in the city's schools. In so doing, the Court strengthened the authority of school administrators and legislatures to maintain order on campuses and in classrooms through the use of general antidisturbance regulations which had often previously been held unconstitutional under a "facial application" of the overbreadth test.[2]

The *Grayned* decision was basically a choice between two conflicting First Amendment doctrines which had both been developed to protect free expression against unconstitutional regulation. The facial attack on overbroad laws was developed to combat laws *hypothetically* capable of unconstitutional application. Under this test a regulation might be held invalid even though the facts of the case before the court would not qualify for constitutional protection, and the defendant's acts could have been prohibited by a properly drawn statute.[3] The alternative approach is best illustrated by the landmark case, *Tinker v. Des Moines Independent Community School District*.[4] The Supreme Court there held that students did not check their constitutional rights "at the schoolhouse gate," and that the First Amendment protected certain expression in the school classroom.[5] The prohibited expression in *Tinker*—the wearing of armbands protesting United States involvement in Vietnam—was held to be protected *because it did not disturb any educational activities*.[6] The court in *Tinker* thus did not overrule

1. 408 U.S. 104 (1972).

2. See text accompanying notes 55-64 *infra*.

3. See text accompanying notes 65-67 *infra*.

4. 393 U.S. 503 (1969) (district court's approval of student's suspension reversed). For landmark decisions in related areas such as due process for students and equal protection in the schools see *Symposium: Student Rights and Campus Rules*, 54 CALIF. L. REV. 1 (1966).

5. 393 U.S. 503, 506 (1969).

6. The *Tinker* reasoning has been similarly applied to a teacher who wore a black armband. Central Dist. Bd. of Educ. v. James, 461 F.2d 566 (2d Cir.), *cert. denied*, 41 U.S.L.W. 3313 (1972).

the school regulation on grounds of a hypothetical constitutional infirmity, but measured the specific facts of the *Tinker* case against a "disturbance criteria." However, the *Tinker* decision did little to clarify, define or narrow the meaning of "disturbance." As a result, while some courts attempted to follow the *Tinker* approach on a case-by-case basis, other courts utilized the overbreadth doctrine sweepingly to invalidate school conduct regulations without regard to the offending conduct actually at issue.

In *Grayned v. City of Rockford* the Supreme Court rejected the facial approach and reaffirmed the *Tinker* holding that the validity of a regulation of expression in the schools must depend upon whether any disturbance of educational activities would result from the expression.[7] This note will examine the background of this controversy, analyze the reasons for the Court's choice in *Grayned*, and explore the implications of the decision.

The Regulation of Expression in the Schools

The Historical Perspective

The confrontations in the schools during the 1960s produced major changes in traditional notions of school authority, discipline, and student rights.[8] The authoritarian relationship of schools to students that had characterized education for generations came under attack as the courts began increasingly to resolve disputes by making determinations which had previously been left to educators.[9] Prior to this change, school administrators had broad powers to act *in loco parentis*; they controlled every aspect of student life, from educational to social, political, and moral, during school hours and even after school hours and to a large extent off of school facilities.[10] The attitude of the courts was that this was an area outside of their competence. The ed-

7. The activities common to demonstrations in the schools and elsewhere may include "pure speech," expressive conduct, assembly, and petitioning for redress of grievances through picketing or leafletting. For simplicity this note will refer to any or all of these activities as expression. For discussions of the extent to which conduct may be accorded the same protection as "pure speech" see T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION (1970); Alfange, *Free Speech and Symbolic Conduct: The Draft-Card Burning Case*, 1968 SUPREME CT. REV. 1; Kaufman, *The Medium, the Message and the First Amendment*, 45 N.Y.U.L. REV. 761 (1970).

8. For reviews of some of the major confrontations of the decade and their legal consequences see REPORT OF THE SELECT COMM. ON CAMPUS DISTURBANCES, J. OF THE (CALIF.) ASSEMBLY (Supp. App. 1969); *Symposium: Student Rights and Campus Rules*, 54 CALIF. L. REV. 1 (1966).

9. *See* Ladd, *Allegedly Disruptive Student Behavior and the Legal Authority of Public School Officials*, 19 J. PUB. L. 209 (1970) [hereinafter cited as Ladd].

10. The decline of the *in loco parentis* role is examined in Beaney, *Students, Higher Education, and the Law*, 45 DENVER L.J. 511, 513-17 (1968).

ucator, by virtue of his training and experience, was the one to decide whether the needs of education justified an abridgment of student rights. Any inquiry by the courts into a rule or regulation was confined to whether any reasonable educational justification could be asserted.[11] The definition of educational purposes and objectives and the means of their advancement were left to the educator and legislature.[12]

The first substantial change in this attitude came with *West Virginia State Board of Education v. Barnette*,[13] in which the Supreme Court recognized constitutional rights of students which were not to be subordinated to asserted interests of education. Similarly, the special competence of the educator was brought into question in *Brown v. Board of Education*[14] and subsequent cases.[15] In *Tinker v. Des Moines Independent Community School District*, the Supreme Court effectively disavowed the competence of the educator where expression is involved.[16] The effect of *Tinker* in substituting the court's judgment for that of the school administrator in a major school disciplinary problem was a significant departure from previous policy and prompted a strong dissent from Justice Black.[17]

By taking the position that the decisions of school administrators were subject to review when First Amendment rights were involved, the courts raised a major policy issue. To what extent should the interests or needs of education prevail against the free exercise of expression? While First Amendment freedoms have been accorded a preferred position among other rights,[18] education must be recognized as an ex-

11. *See* Ladd, *supra* note 7, at 222-26.

12. *Id.*

13. 319 U.S. 624 (1943).

14. 347 U.S. 483 (1954).

15. Ladd, *supra* note 7, considered this erosion of public confidence a secondary effect which occurred during the efforts to implement the *Brown* decision. The resistance of school administrators to the orders of the courts and their willingness to abridge the rights of students because of personal motives or the desire to avoid the pressure of community opinion, destroyed much of their credibility in the eyes of the courts.

16. 393 U.S. 503 (1969). The disavowal was achieved by a reversal of the frame of reference of the courts. While the courts might defer to the educator where academic matters were concerned, the opposite was true when constitutional freedoms were at stake. By thus casting a major school disciplinary problem in terms with which the courts were familiar, the Supreme Court finally rejected the special competence of the educator.

17. "The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected 'officials of state supported public schools . . .' in the United States is in ultimate effect transferred to the Supreme Court." *Id.* at 515 (Black, J., dissenting).

18. First Amendment freedoms are often said to have preferred status among other rights. *See* Kovacs v. Cooper, 336 U.S. 77, 99 (1949); Weaver v. Jordan, 64

tremely important governmental function; education is necessary to produce the informed citizenry vital to a workable democratic system, and it is of great importance to the successful pursuit of happiness in a modern economic society.[19] School administrators need a means of carrying out their educational responsibilities in accordance with the expanded protection of students' rights.[20]

The balancing of the competing interests of education and expression has been at issue in controversies involving a wide variety of statutes, rules and regulations which are employed in the effort to cope with disturbances in schools.[21] The statutes include general

Cal. 2d 235, 241, 411 P.2d 289, 293, 49 Cal. Rptr. 537, 541 (1966); ACLU v. Bd. of Educ., 55 Cal. 2d 167, 178-79, 359 P.2d 45, 51, 10 Cal. Rptr. 647, 653, 1961). This theory is usually a part of the defense rhetoric in demonstration cases. For a good argument against the preferred right doctrine see Weaver v. Jordan, *supra*, at 251-53, 411 P.2d at 300-01, 49 Cal. Rptr. at 548-49 (Mosk, J., dissenting) and *in re* Mannino, 14 Cal. App. 3d 953, 973, 92 Cal. Rptr. 880, 892-93 (1971) (Elkington, J., dissenting); *see generally* Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 25 (1959).

19. *Cf.* Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954); Serrano v. Priest, 5 Cal. 3d 584, 605-10, 487 P.2d 1241, 1255-59, 96 Cal. Rptr. 601, 615-19 (1971). The first section of the California Constitution article on education describes the purpose of education as follows: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." CAL. CONST. art. IX, § 1 (West 1954). This language goes right to the heart of the problem. It would be incongruous to restrict a primary right of the people in the interest of an activity whose purpose is the preservation of those rights. "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount principles of government as mere platitudes." West Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943); *cf.* Serrano v. Priest, 5 Cal. 3d 584, 608, 487 P.2d 1241, 1257, 96 Cal. Rptr. 601, 618 (1971).

20. This problem has appeared recently in several contexts in which assertions of the right to free expression came into conflict with various personal, societal and governmental interests. *See, e.g.*, Adderley v. Florida, 385 U.S. 39 (1965); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Roth v. United States, 354 U.S. 476 (1957). Out of these conflicts have come a diverse and rapidly developing body of law in which the society's interest in the protection of First Amendment rights is balanced against other competent interests. The extent of permissible regulation resulting from this balance defines the limits of protection. The delineation of protected and unprotected expressions take a number of forms; malice in the libel of public figures, or redeeming social value and pandering in obscenity. *See, e.g.*, Ginzburg v. United States, 383 U.S. 463 (1966); New York Times Co. v. Sullivan, *supra*; Roth v. United States, *supra*.

21. The cases accompanying the following penal code citations involve, for the most part, demonstrations in schools. In many of the cases First Amendment protection was claimed for the acts charged. For statutes in other states see Note, *Campus Confrontation: Resolution by Legislation*, 6 COLUM. J.L. & SOC. PROB. 30, 37 (1970).

criminal laws directed toward public order, such as those prohibiting riot and incitement to riot,[22] illegal assembly,[23] false imprisonment,[24] refusal to disperse,[25] assault,[26] disturbing the peace,[27] and obscenity.[28] There are also special criminal statutes which are applicable only to school facilities and involve the same sorts of offenses as the general laws.[29] Misdemeanor and felony penalties provided by these statutes are applicable to both students and non-students.[30] Conspiracy to violate one or more of the above has also occasionally been charged, usually in an attempt to make violation of a misdemeanor statute punishable as a felony.[31]

In addition to the criminal statutes, school boards and administrators are provided with the rule making authority to protect facilities, advance education, and maintain discipline in the schools.[32] Academic

22. CAL. PEN. CODE §§ 404-5 (West 1970); People v. Davis, 68 Cal. 2d 481, 439 P.2d 651, 67 Cal. Rptr. 547 (1968).

23. CAL. PEN. CODE §§ 407-10 (West 1970); *In re* Bacon, 240 Cal. App. 2d 34, 49 Cal. Rptr. 322 (1966).

24. CAL. PEN. CODE §§ 236-37 (West 1970); People v. Arvanites, 17 Cal. App. 3d 1052, 95 Cal. Rptr. 493 (1971) (conspiracy to falsely imprison; holding the Dean in his office until he agreed to certain demands). The court's dismissal of the claim to constitutional protection was remarkably terse; "[T]o equate the conduct of the group which imprisoned [the Dean] with a constitutionally protected demonstration seems absurd. . . . [Their purpose] was not to publicize a grievance or petition for a redress thereof, but extortion." *Id.* at 1059, 95 Cal. Rptr. at 497.

25. CAL. PEN. CODE § 409 (West 1970); People v. Uptgraft, 8 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 459, App. Dept. Super. Ct., *cert. denied*, 400 U.S. 911 (1970).

26. CAL. PEN. CODE §§ 240-41 (West 1970); *In re* Mannino, 14 Cal. App. 3d 953, 92 Cal. Rptr. 880 (1971).

27. CAL. PEN. CODE § 415 (West 1970); Castro v. Superior Ct. of L.A. County, 9 Cal. App. 3d 675, 88 Cal. Rptr. 500 (1970).

28. *Cf.* Goldberg v. Regents of the Univ. of Calif., 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967); CAL. PEN. CODE § 647 (West 1970); CAL. PEN. CODE § 311.2 (West 1970); CAL. PEN. CODE § 311.6 (West Supp. 1972).

29. *E.g.*, CAL. PEN. CODE § 415.5 (West 1970) (disturbing the peace of a community college, state college or university); CAL. PEN. CODE § 626.8 (West 1970) (disruptive presence at schools); People v. Horton, 9 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 818 (App. Dept. Super. Ct. 1970); CAL. PEN. CODE § 626.4 (West 1970) (entry upon campus knowing that permission to enter has been denied).

30. In discussing disorder in the schools, not only students but teachers and nonstudents are typically involved. Since the criminal statutes and school regulations will generally apply equally to these groups, the terms "student" or "demonstrator" may be used to denote members of the group opposing the school authorities during a demonstration. See CAL. EDUC. CODE § 13558.5 (West 1969) for an example of special laws relating only to nonstudents. For a discussion of the status of students on leave, suspension, or other special relationship to the academic community, see Comment, *The University and the Public: The Right of Access by Nonstudents to University Property*, 54 CALIF. L. REV. 132 (1966).

31. *E.g.*, People v. Arvanites, 17 Cal. App. 3d 1052, 95 Cal. Rptr. 493 (1971); Castro v. Superior Ct. of L.A. County, 9 Cal. App. 3d 675, 88 Cal. Rptr. 500 (1970).

32. *E.g.*, CAL. EDUC. CODE §§ 22600, 23604 (West 1969).

penalties such as suspension or expulsion are provided for violation of these rules.[33] They are, of course, applicable only to members of the academic community. In addition to academic penalties, statutes often provide that violation of school rules or regulations will constitute a misdemeanor.[34]

While demonstrations in a school may involve violations of a number of criminal statutes or administrative regulations, demonstrators invariably claim First Amendment protection for their conduct.[35] These various statutes, rules and regulations increasingly have become subject to constitutional attack on First Amendment grounds.

The Disturbance Standard

The regulation of the violent conduct prohibited by many of the criminal statutes posed few constitutional problems; the First Amendment provides no protection for violent conduct, whether it occurs in or out of a school.[36] The problems appeared when "pure speech" and other non-violent forms of expression disrupted a school.

In the landmark *Tinker* decision, the Supreme Court was confronted with an administrative, non-criminal, regulation of expression in the schools.[37] This case arose out of the suspension of the Tinker children for wearing black antiwar armbands in violation of a school board order prohibiting this conduct. The majority of the Court found that the symbolic conduct did not constitute an undue dis-

33. *E.g.*, CAL. ADM. CODE § 41301.

34. *E.g.*, CAL. EDUC. CODE § 23604.1 (West 1969); *see* People v. Hairston, 8 Cal. App. 3d Supp. 19, 87 Cal. Rptr. 470 (App. Dept. Super. Ct.), *cert. denied*, 400 U.S. 952 (1970).

35. Since both criminal and administrative sanctions may be imposed under a variety of statutes or rules for a given disruptive act, and since the choice of sanctions may be made after the act, no distinction should be made between decisions in criminal cases and those in civil cases in which the validity of a regulation is challenged prior to its violation. Where expression is concerned, a regulation may be challenged without regard to the normal rules of standing. *See* Dombrowski v. Pfister, 380 U.S. 479 (1965). *See generally* Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844, 855-56 (1970).

36. *See* Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 514 (1969); Los Angeles Teachers Local 1021, AFT v. Los Angeles City Bd. of Educ., 71 Cal. 2d 551, 558-59, 455 P.2d 827, 835, 78 Cal. Rptr. 723, 731 (1969). Closely related to expression by violent means is conduct which physically obstructs or interferes with normal activities in a school. Picketing and "sitting-in" halls and offices is not protected when it blocks access to buildings or offices or movement in halls or on sidewalks. *See, e.g.*, People v. Horton, 9 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 818 (App. Dept. Super. Ct. 1970). When it does not block but only impedes traffic, the conduct may be protected. *Cf.* Mandel v. Municipal Ct., 276 Cal. App. 2d 649, 81 Cal. Rptr. 173 (1969). The extent of interference is a factual issue to be determined by disturbance criteria.

37. 393 U.S. 503 (1969).

turbance of a classroom and, therefore, was protected by the First Amendment against regulation.[38] The Court cited approvingly the distinction made in two Fifth Circuit cases, *Burnside v. Byars*[39] and *Blackwell v. Issaquena County Board of Education.*[40] These cases involved related expressive conduct, the wearing of protest buttons. In *Burnside v. Byars* the expression was protected against regulation because the court found that no disruption occurred or was threatened.[41] In contrast, the *Blackwell* court found that the wearing of the buttons resulted in arguments, pushing and shoving in the halls, and intimidation of other students.[42] The court therefore upheld the prohibition of the expression which caused the disturbance rather than requiring the school authorities to focus disciplinary measures on the resultant disruptive acts, *i.e.*, the scuffling, intimidation or arguing.[43] The distinction between the two cases is the existence or nonexistence of "disturbance of educational activities" resulting from the challenged expression.

"Disturbance" may thus be seen as the key to the permissible regulation of the time, place and manner of expression in the schools.[44] Where disturbance of educational activities occurs or is reasonably expected, a wide variety of criminal or administrative sanctions may be employed against the expression.[45] Where this disruption is lack-

38. *Id.* at 505, 513-14. In his dissent, Justice Black disagrees with this finding, noting the distraction of pupils from studies, talking in class and other minor disruptions. *Id.* at 517-18.

39. 363 F.2d 744 (5th Cir. 1966).

40. 363 F.2d 749 (5th Cir. 1966).

41. 363 F.2d 744, 748 (5th Cir. 1966).

42. 363 F.2d 749, 751 (5th Cir. 1966).

43. *Id.* at 754.

44. "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. . . . We emphatically reject the notion . . . that the First and Fourteenth Amendments afford the same freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing . . . as these amendments afford to those who communicate ideas by pure speech." Cox v. Louisiana, 379 U.S. 536, 554-55 (1965).

45. The restraint must be designed to further some societal interest whose benefits must outweigh the resulting impairment of the constitutional right, and there should be no equally beneficial alternative which is less subversive of the right. NAACP v. Button, 371 U.S. 415 (1963); Bagley v. Washington Township Hospital Dist., 65 Cal. 2d 499, 421 P.2d 409, 55 Cal. Rptr. 401 (1966). *See generally Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969). That equal protection requirements apply to limitations of First Amendment rights is implied in Williams v. Rhodes, 393 U.S. 23, 32 (1968). The state action required by the equal protection requirements of the Fourteenth Amendment is present because school administrators and teachers are creatures of the state. West Va. St. Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943); *cf.* Hamilton v. Regents of the Univ. of Calif., 293 U.S. 245, 257 (1934). While complete prohibition of expression is forbidden by the First Amendment, some nominally public facilities have been held to be functionally nonpublic,

ing, the First Amendment protects the expression against any regulation.

The Court in *Tinker* did not explain in any detail what would constitute disturbance of educational activities, or whether all activities carried on at a school could be protected against disruption from conduct within the purview of the First Amendment. Instead, the Court concentrated on the limitations on the authority of school administrators. In order to restrict expression "undifferentiated fear or apprehension of disturbance" will not suffice.[46]

> [School officials] must be able to show that [their] action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.[47]

As to "how much more," the Court approved the *Burnside v. Byars* requirement that *material and substantial interference* with the requirements of the educational activities affected is necessary.[48]

The California Supreme Court followed the *Tinker* doctrine in *Los Angeles Teachers Union, Local 1021, AFT v. Los Angeles City Board of Education,*[49] a suit to invalidate a regulation prohibiting the solicitation of signatures for a petition during school hours. The court found that this activity was within the scope of the First Amendment, and that when carried out during the lunch hour it caused no material or substantial interference with any valid educational interest. The court refused to accept the school's contention that the solicitation could have been carried on outside of school hours. The court found instead that the activity was most effective during school hours and could not be restricted during this time without the loss of its expressive value. The decision did not specify what would constitute a material or substantial intereference, except that it would require a "significant threat to the 'efficiency and integrity of the public service.' "[50]

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closed to demonstrators as well as to nondemonstrators. *See, e.g.*, Adderley v. Florida, 385 U.S. 39 (1966) (jails). Private property has, however, been sometimes held to be functionally public. *See, e.g.*, Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968); *In re* Cox, 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970) (shopping centers); *In re* Lane, 71 Cal. 2d 872, 457 P.2d 561, 79 Cal. Rptr. 729 (1969) (privately owned sidewalk). Other public facilities have been held to be improper for demonstrations although they are open to the public. *See, e.g.*, Cameron v. Johnson, 390 U.S. 611 (1968); Cox v. Louisiana, 379 U.S. 559 (1965) (courthouses). *But see* Brown v. Louisiana, 383 U.S. 131 (1966) (public libraries); Edwards v. So. Carolina, 372 U.S. 229 (1963) (state capital). Under *Tinker*, schools are clearly not such places. 393 U.S. at 511-12.

46. 393 U.S. at 508.
47. *Id.* at 509.
48. *Id.*
49. 71 Cal. 2d 551, 455 P.2d 827, 78 Cal. Rptr. 723 (1969).
50. *Id.* at 564, 455 P.2d at 835, 78 Cal. Rptr. at 731.

Some of the language in these principal cases suggests that only severe disruptions sufficient to incapacitate educational activities could justify regulation of expression.[51] This interpretation is undoubtedly not the intent of the courts. The implication in *Tinker* is that interference with the progress of minor activities such as a single lesson might be prohibited.[52] Interference, like disturbance, is a highly subjective term, however. The type of conduct that might be disturbing enough to interfere with a class will vary according to the setting, the personalities, and even the message of the demonstrators.[53] Various topics, teaching methods, and class experience or maturity levels may dictate the degree of permissible interference from dissent, unrest, or argument.[54] In libraries the standards might be far stricter, whereas on school grounds outside classroom buildings, only concern for the prevention of violence might justify the regulation of expression. The necessities and usages of each separate educational activity will thus give rise to different standards regarding what constitutes disruption or disturbance.

51. The *Tinker* decision alludes to the "comprehensive authority of . . . school officials" to maintain discipline, but does not spell out what other expressive conduct might have been accorded the same protection as that given to the wearing of armbands. 393 U.S. at 507, citing Epperson v. Arkansas, 393 U.S. 97, 104 (1968). Justice Stewart concurring in *Epperson* distinguished between the valid authority of the school administrator to define and prescribe a curriculum and the wholly invalid attempt to extend that authority to the abridgment of expression. 393 U.S. at 116.

52. 393 U.S. at 508. There is an indication that the case might have gone the other way if Mary Beth Tinker had done anything but sit at her desk, saying nothing, and looking straight ahead. Many courts have taken this line. *See, e.g.*, Lipkis v. Caveney, 19 Cal. App. 3d 383, 96 Cal. Rptr. 779 (1971). This was a suit to compel school authorities to permit speeches in the school "quad." The prohibition was based on the fact that several unauthorized speeches previously had resulted in disorder. On one of these occasions the disruption consisted of the audience heckling the principal's attempt to silence a speaker addressing students eating their lunches in the quad. The court found that the principal's judgment that these speeches would cause a disruption of the educational process was based on twenty years experience with student gatherings resembling the intended rallies, and was "anything but based on undifferentiated fear or apprehension of disturbance." See text accompanying note 46 *supra*. The prohibition was accordingly upheld.

53. Normally the courts summarily reject any suggestions that protection might depend upon the content of the message. "It is not for this or any other court to distinguish between issues and to select for constitutional protection only those which it feels are of sufficient social importance." Hatter v. Los Angeles City High School Dist., 452 F.2d 673, 675 (9th Cir. 1971). It should be clear, however, that certain subjects, such as racial slurs, have such a high potential for disturbance that regulation would be necessary. *Cf.* Feiner v. New York, 340 U.S. 315 (1951); Terminiello v. Chicago, 337 U.S. 1 (1949).

54. While the armbands worn in *Tinker* might not have distracted a class in mathematics, for instance, a pure speech statement about Vietnam certainly would have. Thus, in this case, conduct is protected to a greater extent than speech, rhetoric to the contrary notwithstanding. *See, e.g.*, Cox v. Louisiana, 379 U.S. 536, 555 (1965).

The First Amendment Overbreadth Doctrine and Disturbance of the Peace

Concurrent with the establishment of the "disturbance" standard articulated in *Tinker*, a second approach to the problem, the First Amendment overbreadth doctrine, was gaining increasing favor.[55] This doctrine permits a facial attack on the validity of a statute, rule or regulation irrespective of the facts of the particular case.[56] The result has been the frequent invalidation of general disturbance of the peace statutes.[57]

The theory of the overbreadth doctrine is that regulations aimed at expressive conduct or at conduct associated with speech must be drawn narrowly and with specificity so as to prohibit only conduct deemed evil.[58] When a statute is not sufficiently narrow or specific, but instead is drawn so as to encompass activities protected by the First Amendment, it is overbroad. Any statute which restricts expression in general terms or which lends itself to a substantial number of overbroad applications may be declared *unconstitutional on its face* instead of merely being construed so as to eliminate the invalid applications.[59]

The primary value of this "facial attack" as a defense lies not in its legal theory but in its procedural aspects. Because of the "chilling effect" of overbroad laws on the exercise of First Amendment freedoms, a defendant may not be burdened by such a law even if his particular conduct is not protected and could have been prohibited by a properly drawn regulation.[60] In order to demonstrate the overbreadth of a statute, instances in which it might apply to and prohibit protected conduct are brought to the court's attention. These situations need not be documented; they may be wholly hypothetical cases. If the statute

55. The allegation of unconstitutionality because of overbreadth has become a sort of "common count" along with the "chilling effect" rhetoric, in the defense of demonstration cases. *See, e.g., In re* Bushman, 1 Cal. 3d 767, 463 P.2d 727, 83 Cal. Rptr. 375 (1970); Castro v. Superior Ct. of L.A. County, 9 Cal. App. 675, 88 Cal. Rptr. 500 (1970). For a discussion of the history, theory, and problems involved in the doctrine see Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844 (1970).

56. *See, e.g.*, Cox v. Louisiana, 379 U.S. 536 (1965); Thornhill v. Alabama, 310 U.S. 88 (1940).

57. *See, e.g.*, Castro v. Superior Ct. of L.A. County, 9 Cal. App. 3d 675, 88 Cal. Rptr. 500 (1970).

58. NAACP v. Button, 371 U.S. 415 (1963).

59. *Id.* at 432-33.

60. Dombrowski v. Pfister, 380 U.S. 479 (1965); Thornhill v. Alabama, 310 U.S. 88 (1940). Another important effect of the doctrine is that a regulation may be challenged before it has been violated; the normal rules of standing are relaxed when expression is involved. Dombrowski v. Pfister *supra.*

can be shown to apply to a substantial number of such situations, it may be declared unconstitutional *without any consideration of the facts of the case before the court.*[61]

The facial approach to overbroad laws is an extremely valuable device for attacking statutes or regulations whose purpose is the suppression of expression through the prohibition of conduct associated with or vital to the dissemination of that expression. The doctrine is also extremely valuable for forcing precision of draftsmanship where the discretionary authority of an official may extend to allow the abridgment of protected activities.[62] The approach has less validity when used to invalidate statutes directed at conduct which may only incidentally be connected with expression.

General public order statutes prohibiting disturbance of the peace are frequently employed against demonstrators and have often been struck down in their entirety for overbreadth. The hypothetical situation which is usually advanced in such cases to show the sweeping nature of the statutory language is that onlookers may be "disturbed" by ideas or arguments with which they disagree or find distasteful.[63] The statutes are not necessarily overbroad in the majority of applications, and could not be said to have been enacted to suppress free expression. Their area of impact is conduct only incidentally associated with expression and they are not directed at expression "by their terms."[64] While it might seem easy for a court to construe such a statute in a way which would eliminate the hypothetical invalid application, many courts, including the Supreme Court, have chosen to employ the facial approach.

The solution to the problem of overbroad laws is said to be precision of draftsmanship. Unfortunately, the courts do not often explain how this is to be accomplished. The Supreme Court has said:

> [It is] not our duty and indeed not within our power to set out and define with precision just what statutes can be lawfully enacted to deal with [disruptive] situations.[65]

It is also recognized, however, that "it is very easy to read a statute to permit some hypothetical violation of civil rights but difficult to draft

61. Fort v. Civil Service Comm'n, 61 Cal. 2d 331, 392 P.2d 385, 38 Cal. Rptr. 625 (1964).

62. *Cf.* Burton v. Municipal Court, 68 Cal. 2d 684, 441 P.2d 281, 68 Cal. Rptr. 721 (1968) (licensing statute permitting overbroad discretionary authority to be exercised by a censorship board).

63. *See, e.g.*, Cox v. Louisiana, 379 U.S. 536, 551-52 (1965); Castor v. Superior Ct. of L.A. County, 9 Cal. App. 3d 675, 701-03, 88 Cal. Rptr. 500, 520-21 (1970).

64. *See generally* Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844, 858-65 (1970).

65. Gregory v. Chicago, 394 U.S. 111, 118 (1969) (Black and Douglas, J.J., concurring).

one which will not be subject to the same infirmity."[66] Consequently, many courts refuse to accept the facial approach unless the statute seems clearly directed at expression itself. These courts use the traditional as applied approach for statutes principally aimed at conduct other than expression. The statute is thus reshaped by judicial construction to excise the impermissible applications.

The necessity of reshaping statutes under the as applied approach is one of the major problems with the doctrine for courts. Consequently, even within the same jurisdiction different courts disagree as to the doctrine's applicability. The California Supreme Court, for instance, leans toward the as applied approach, and has approved of a number of general antidisturbance regulations by eliminating improper applications.[67] Lower California courts have used the facial approach to invalidate other substantially similar laws.

The Overbreadth Doctrine in the Schools

Criminal statutes are not the only prohibitions which may be subject to attack for overbreadth; administrative regulations and even orders by school officials and teachers may be scrutinized.[68] The doctrine will apply whenever a regulation of conduct is so sweeping that protected activities may be prohibited. As previously discussed, constitutional protection of expression in schools hinges upon whether that expression results in any disturbance of educational activities. If a facial attack on a regulation is permitted by a court, the issue of constitutional protection based on the disturbance standard will not be reached.

A typical example of this situation occurred in a 1970 California case *Castro v. Superior Court of Los Angeles County*,[69] which chal-

66. Kunz v. New York, 340 U.S. 290, 304 (1951) (Jackson, J., dissenting); *accord*, Grayned v. City of Rockford, 408 U.S. 104, 110 (1972).

67. *See In re* Cox, 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970); *In re* Kay, 1 Cal. 3d 930, 464 P.2d 142, 83 Cal. Rptr. 686 (1970); *In re* Bushman, 1 Cal. 3d 767, 463 P.2d 727, 83 Cal. Rptr. 375 (1970). Only when regulations seem directed at expression itself or at some form of expressive conduct does the court allow the facial attack of the overbreadth doctrine. *Cf.* Burton v. Municipal Court, 68 Cal. 2d 684, 441 P.2d 281, 68 Cal. Rptr. 721 (1968).

68. *See generally* Note, *Bringing the Vagueness Doctrine on Campus*, 80 YALE L.J. 1261 (1971). The overbreadth doctrine had been applied to school administrative rules by lower courts in many cases prior to *Tinker*. The following cases are examples of situations where the facial approach of the overbreadth doctrine had invalidated a rule even though some of the acts involved might constitutionally have been prohibited. Soglin v. Kaufman, 295 F. Supp. 978 (W.D. Wis. 1968); Snyder v. Bd. of Trustees of Univ. of Ill., 286 F. Supp. 927 (N.D. Ill. 1968) (statute unconstitutional on its face and as applied); Dickson v. Sitterson, 280 F. Supp. 486 (M.D.N.C. 1968); Hammond v. So. Car. St. College, 272 F. Supp. 947 (D.S.C. 1967).

69. 9 Cal. App. 3d 675, 88 Cal. Rptr. 500 (1970).

lenged the constitutionality of California Education Code § 16701.[70] This law was a generally worded disturbance statute designed to prevent disorder in the schools. It provided that: "[a]ny person who wilfully disturbs any public school or any public school meeting is guilty of a misdemeanor." This statute was first enacted in 1873, and remained unchanged until 1969 when the original fine of *$10 to $100* was changed to *not more than $250.*[71] During the ninety-seven year life of the statute, its validity was never tested at the appellate level. Similar California statutes prohibit disturbing the peace in general,[72] at state colleges and universities,[73] and at religious[74] and public[75] meetings. However, in *Castro,* Education Code § 16701 was declared unconstitutional on the grounds that "disturb" was a term subject to general and sweeping application in that persons could be disturbed by disquieting ideas or concepts.[76]

This decision was based upon a consideration of the possibility of invalid application in hypothetical situations; the acts of the defendants played no part in the court's determination. In fact, the court agreed that the petitioners had committed a number of unlawful acts and lamented that the decision might prevent punishment for these acts.[77] The court even agreed that the defendants had disturbed the school.[78] The use of the facial approach thus precluded the applica-

70. Cal. Stat. 1959, ch. 2, § 16701, at 1125.

71. The statute passed through a number of codes during its lifetime: CAL. POL. CODE § 1868 and SCHOOL CODE § 3.70 (added Cal. Amend. 1873-74, ch. 543, § 62, at 111); CAL. EDUC. CODE § 19501 (Cal. Stat. 1943, ch. 71, § 19501, at 692); CAL. EDUC. CODE § 16701 (Cal. Stat. 1959, ch. 2, § 16701, at 1125). The 1969 revision changed the wording slightly: "Any person who willfully disturbs any public school or any public meeting is guilty of a misdemeanor, and shall be punished by a fine of not more than two hundred fifty dollars ($250)." Cal. Stat. 1969, ch. 972, § 3, at 1934). In 1972, after being held unconstitutional in *Castro v. Superior Ct. of L.A. County,* 9 Cal. App. 3d 675, 99 Cal. Rptr. 500 (1970), § 16701 was re-enacted, word-for-word, as § 16675. Cal. Stat. 1972, ch. 670, § 4, at 658-59. This appeared to be a legislative oversight—clearing a block of code numbers for a major piece of legislation— rather than a casting of the gauntlet to the courts. *See* AB 99, § 4, 1972 J. OF THE CALIF. SENATE, at 3910, 4879.

72. CAL. PEN. CODE § 415 (West 1970); *In re* Bushman, 1 Cal. 3d 767, 463 P.2d 727, 83 Cal. Rptr. 375 (1970).

73. CAL. PEN. CODE § 415.5 (West Supp. 1972).

74. CAL. PEN. CODE § 302 (West 1970); People v. Cruz, 25 Cal. App. 3d Supp. 1, 101 Cal. Rptr. 711 (1972).

75. CAL. PEN. CODE § 403 (West 1970); *In re* Kay, 1 Cal. 3d 930, 464 P.2d 142, 83 Cal. Rptr. 686 (1970).

76. 9 Cal. App. 3d at 702, 88 Cal. Rptr. at 521.

77. *Id.* at 677, 679, 88 Cal. Rptr. at 502, 503. The acts included the basic demonstration repertoire: threats and obscenities hurled at school officials, mass walkouts, garbage cans tossed down stairs, fires set, and rocks, bottles and cherry bombs thrown. *Id.* at 679-80, 88 Cal. Rptr. at 504.

78. *Id.* at 679 n.3, 88 Cal. Rptr. at 503 n.3, the majority cited flagrant viola-

tion of the disturbance standard enunciated in *Tinker*.[79]

The Effect of Grayned v. City of Rockford

It is against this background of competing interests and First Amendment theories that *Grayned v. City of Rockford* must be viewed.[80] This case involved a statute very similar to California Education Code § 16701, ruled unconstitutional in *Castro v. Superior Court*. The ordinance in *Grayned* prohibited "mak[ing] or assist[ing] in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of [a] school session or class thereof . . . ."[81] This law is clearly subject to the same infirmities as California Education Code § 16701. Students' minds or attention might be "diverted" from their studies by disquieting ideas; they might be "disturbed" by a speech protesting actions in Vietnam.[82] The United States Supreme Court nonetheless rejected the contention that this statute was overbroad. The Court held that the law was not "a vague, general 'breach of the peace' ordinance, but a statute written specifically for the school context, where the prohibited disturbances are easily measured by their impact on the normal activities of the school."[83]

Between the rival theories of the facial approach of the overbreadth doctrine and the disturbance standard, the Court in *Grayned* clearly chose the latter. The Court found that the statute in *Grayned* was "narrowly tailored to further Rockford's compelling interest in having an undisrupted school session conducive to the students' learning."[84] Since this regulation is subject to the same potentially invalid

tions of CAL. EDUC. CODE § 13558.5 (West 1969) prohibiting nonstudents from entering school grounds and interfering willfully with the operation of a school with intent to disrupt it. In footnote 4 the court cited evidence of planning and organizing the walkout, but it denied that direct evidence existed of planning to violate CAL. EDUC. CODE § 16701. While concurring in the result, Associate Justice Stevens correctly recognized that "anyone who conspires with others to cause high school students to abandon their classes and achieves such purpose by causing a 'walkout' during the school session certainly 'disturbs'—to the point of extinction—the 'school' for a building without students is not a school, except in name only." 9 Cal. App. 3d at 708-09, 88 Cal. Rptr. at 525.

79. It should be noted that CAL. EDUC. CODE § 16701 was not the major issue of the *Castro* case. The primary charges were conspiracy to violate § 16701 and CAL. PEN. CODE § 415 (California's general disturbance of the peace statute). The case was thus an attempt to apply felony penalties to violations of misdemeanor statutes, and in the case of § 16701, a misdemeanor considered so minor that not even one day of jail is prescribed as a punishment. See text accompanying note 71 *supra*.

80. 408 U.S. 104 (1972).

81. *Id.* at 108.

82. This usage of "diversion" is that quoted in *Grayned* at 111 n.16.

83. *Id.* at 112.

84. *Id.* at 119.

applications found objectionable in other cases, what the Court evidently means is that the statute is tailored *narrowly enough* for the school context. The statute cannot be overbroad because it "goes no further than *Tinker* says a municipality may go to prevent interference with its schools."[85] A municipality may, therefore, prevent disorders in its schools by enacting general antidisturbance regulations that would be objectionably overbroad in other contexts.

The reason behind this exception to the rule against general breach of the peace regulations must lie in a recognition of the subjective nature of disturbance in the schools. The decision implies this recognition:

> Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the Rockford ordinance are marked by "flexibility and reasonable breadth, rather than meticulous specificity."[86]

The necessary quantum of disturbance was neither specified by the statute nor required by the Court. Whether a material or substantial disruption would be created by a particular demonstration must depend upon "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."[87] "That decision is made, as it should be, on an individualized basis, given the particular fact situation."[88]

The Implications of Grayned v. City of Rockford

The Supreme Court's decision in *Grayned* must be viewed in its own limited context. It does not extend beyond the school situation, and despite the Court's statements on the inherent limitations of language, the decision is not a major setback for the overbreadth doctrine. Even in the schools, regulations directed primarily at the content of expression or at conduct inextricably tied to the dissemination of a message, as in *Tinker*, will still be subject to facial attack. The *Grayned* decision, however, did give legislatures and school boards the ability to create general antidisturbance regulations in terms which would allow school officials reasonable flexibility in coping with demonstrations. The validity of those regulations would be determined on an as applied basis using disturbance criteria. Applications of such statutes to First Amendment protected conduct would be eliminated by judicial construction, but the statute itself would not be held invalid.

Because of the subjective nature of disturbance in the schools, the line between acceptable and unacceptable expression will not al-

85. *Id.*
86. *Id.* at 110.
87. *Id.* at 116.
88. *Id.* at 119.

ways be clear. As a result, demonstrators may not be given fair warning of what the law forbids. Some special school regulations solve this problem by empowering a school official to determine when impermissible disturbance exists or is imminent and then to issue orders to demonstrators to desist or leave school grounds.[89] Failure to leave when ordered, or entry without permission after such an order, is defined as a misdemeanor.

In the recent California Supreme Court case *In re Kay* this procedural concept was applied to a statute which did not include a notice provision.[90] *Kay* involved the analogous situation of a disturbance of a political meeting, the familiar setting of a campaign speech interrupted by heckling. The statute involved was similar to California Education Code § 16701, substituting "public assembly or meeting" for "school or school meeting".[91] The court rejected a facial attack on the statute and balanced the competing interests by finding that public meetings and assemblages of all sorts have customs and usages necessary to insure the effective conduct of their intended business.[92] Expressive conduct, known by a reasonable man to be outside of these customs and usages, may be regulated to the extent necessary to prevent undue disruption.[93] Since these subjective standards clearly provide no warning to a dissenter when his conduct might cross the line separating permissible from impermissible acts, fair and adequate notice must be given before criminal penalties could attach.[94] Thus, in *Kay*, a general disturbance ordinance with no provision for an order to leave was held not to be effective until such an order had been given.

This notice procedure might also solve the lack of fair warning problem where schools are concerned. Flexible disturbance regulations would not become operative until a school official had properly determined that a material and substantial disruption either was occurring or was imminent, and had notified the demonstrators that such

89. *See, e.g.*, CAL. PEN. CODE § 626.8 (West 1970); People v. Horton, 9 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 818 (App. Dept. Super. Ct. 1970); People v. Agnello, 259 Cal. App. 2d 785, 66 Cal. Rptr. 571 (1968).

90. 1 Cal. 3d 930, 464 P.2d 142, 83 Cal. Rptr. 686 (1970).

91. CAL. PEN. CODE § 403 (West 1970).

92. The court recognized the necessity in our political system for office-seekers to express their views in public forums. It also recognized the utility, if not the necessity, of allowing free and open dissent from these views as a means of apprising politicians of discontent among their constituents and of forcing comment on issues which the politicians might rather ignore. 1 Cal. App. 3d at 938-40, 464 P.2d at 146-48, 83 Cal. Rptr. at 690-92.

93. "This inhibition does not mean, however, that the state can grant to the police a 'roving commission' to enforce Robert's Rules of Order." *Id.* at 948-49, 464 P.2d at 147, 83 Cal. Rptr. at 691.

94. *Id.* at 945, 464 P.2d at 152, 83 Cal. Rptr. at 696.

conduct could not continue.[95]

Under *Gayned* the school administrator might appear to be reinvested with much of the authority that he had lost as a result of *Tinker*. This is not really the case. The administrative discretion exercised under an otherwise valid disturbance statute can be no broader than the scope of the statute itself. An overbroad exercise of discretion which touches protected activities will be invalid; refusal to obey such an invalid order can not be criminal.[96] The school administrator must thus be prepared to justify to a reviewing court his determination that a mode of expression would have constituted an actual or imminent disturbance of a valid educational activity.[97] He must be able to show that his determination was made in accordance with the constitutionally acceptable construction of the statute.

A second major problem arising from the Supreme Court's recognition of the subjective nature of disturbance involves the treatment of related crimes, the associational and preparational crimes such as conspiracy, solicitation and attempt. If it cannot be determined in advance whether a given mode of expression will be constitutionally protected or not, then the usual rules for these related crimes must be modified. Both *Castro* and *United States v. Spock*[98] involved conspiracy charges resulting from expressive activities. In *Castro*, the court required stricter standards of proof than those provided by the normal circumstantial evidence rule for conspiracies.[99] In *Spock*, the

95. This would have solved the *Castro* court's objection to the rehabilitation of CAL. EDUC. CODE § 16701; *see* 9 Cal. App. 3d at 701, 88 Cal. Rptr. at 519.

96. *See* Grody v. State, 278 N.E.2d 280 (Ind. 1972).

97. The reasonableness of the apprehension of violence by school administrators must be closely scrutinized by the courts. In People v. Uptgraft, 8 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 459 (App. Dept. Super. Ct.), *cert. denied*, 400 U.S. 911 (1970), a two month pattern of violence and property damage was held to justify a determination that any assemblage would constitute a threat to public order and safety and was therefore unlawful. Even though no violent acts occurred or seemed imminent to observers or appeared on films of the demonstration, the appellate court accepted the trial court's finding that any assemblage would constitute a clear and present danger given the climate that existed on the campus. This decision seems highly questionable; the courts should examine carefully any such arguments by officials who declare demonstrations illegal. This is not meant to suggest that a valid and reasonable anticipation of imminent violence or other disruption should not be grounds for prior restraint of a demonstration. The ability to head-off disruption is a vital part of authority to maintain order on a campus, but this authority must be exercised within constitutional limitations. *See* Healy v. James, 408 U.S. 169 (1972). *See generally* Blasi, *Prior Restraints on Demonstrations*, 68 MICH. L. REV. 1482 (1970); Rosenthal, *Injunctive Relief Against Campus Disorders*, 118 U. PA. L. REV. 746 (1970).

98. 416 F.2d 165 (1st Cir. 1969).

99. The three members of the *Castro* court were so widely divided on this issue that the lead opinion has no precedential value. Only one member of the court directly confronted their obvious distaste for the attempt to raise minor misdemeanor vio-

court limited the extent to which members of a group who plan a demonstration will be responsible for the acts of other members.[100] Similar reasoning should apply to the other related crimes as well. It is evident that related crimes should be charged only when the object of the combination or preparation is the achievement of the ultimate harm: disturbance of the school.

Conclusion

The effect of *Grayned v. City of Rockford* is twofold. It recognizes the inherently subjective nature of disturbance in the schools, and the need for flexibility in its regulation by upholding general antidisturbance regulations; it also rejects the facial overbreadth approach in favor of the disturbance standard advanced by *Tinker*.

Under *Grayned* and *Tinker* school officials have the necessary authority to cope with disruptive demonstrations.[101] They need only understand the constitutional limitations of that authority and be prepared to justify their actions in terms of those limitations.[102] The primary limitation, as always, is that the authority to prevent disruptions of educational activities should never be exercised to suppress the expression of ideas.[103]

> History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society.[104]

Lewis W. Teel

lations to the felony level. *See* 9 Cal. App. 3d at 711, 88 Cal. Rptr. at 526 (Stevens, J., concurring).

100. 416 F.2d 165, 173 (1st Cir. 1969) (dictum).

101. *See also* Healy v. James, 408 U.S. 169 (1972). This case provides further support for the *Grayned* decision. *Healy* involved a denial of school recognition to a Students for a Democratic Society (SDS) chapter based on the college president's decision that the local SDS group had failed to show they were independent from the national organization. The Supreme Court held this was an insufficient basis for denial of recognition and a violation of petitioners' First Amendment rights. The court added in dictum, however, a proper basis for nonrecognition might be the group's refusal to comply with a rule requiring it to abide by reasonable campus regulations. The Court thus supported validity of such regulations and the right of the school to make prior agreements to follow those rules a precondition to school recognition. 408 U.S. at 191-94.

102. *See generally* Johnston, *The First Amendment and Education—A Plea for Peaceful Coexistence*, 17 VILL. L. REV. 1023, 1027 (1972).

103. "In order to discourage [violent dissent] the courts must take pains to assure that the channels of peaceful communication remain open and that peaceful activity is fully protected." Los Angeles Teachers Local 1021, AFT v. Los Angeles City Bd. of Educ., 71 Cal. 2d 551, 565, 455 P.2d 827, 836, 78 Cal. Rptr. 723, 732 (1969).

104. Sweezy v. New Hampshire, 354 U.S. 234, 251 (1957) (Warren, C.J.).

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